IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUMMONS FOR JUDGMENT NO.553 OF 2003

IN

SUMMARY SUIT NO.4958 OF 1999

M/s N.Maneshkumar & Co .. Plaintiff

versus

M/s Anil Enterprise .. Defendant

...

Mr.Satyen Vora for Plaintiff.

Mr.Sanjiv Singh i/b Bipin Joshi for Deft nos. 1 & 3

CORAM : D.G. KARNIK, J

DATED : 7th March 2005.

P.C:-

1. Heard learned counsel for the plaintiff and defendant nos. 1 and 3.

2. Learned counsel for the plaintiff seeks leave to withdraw the suit against the defendant no.2 as he could not be served. Suit against the defendant no.2 is disposed of for non prosecution.

3. Learned counsel for the plaintiff waives claim for interest up to the date of the filing of the suit. Despite service of the Summons for Judgment on the defendant nos. 1 and 3 as far back as July, 2003 they have not filed any affidavit in reply. Hence, the averments made in the plaint are deemed to be admitted.

4. Learned counsel for the plaintiff hands in the affidavit of service as well as the list of documents. The affidavit and the documents are taken on record. The documents are collectively marked Exhibit A for identification.

5. The defendant no.1 is a partnership firm and the defendant no.3 is its partners. The plaintiff sold, delivered and supplied to the defendants goods. The plaintiff has filed on record the office copies of the invoices and lorry receipts. The defendants did not make the payment. By two letters dated 25th May, 1997 and 20th November, 1997 the defendants promised to make the payment. The original letters are ealso filed on record. In the absence of any affidavit in reply, the plaintiff is entitled to a decree under

order 37 Rule 3 (6) of the Code of Civil Procedure.

6. Hence, Summons for Judgment is made absolute and suit of the plaintiff is decreed against the defendant nos. 1 and 3 as follows:

> " The defendant nos. 1 and 3 shall pay to the plaintiff a sum of Rs.4,32,855.40 together with interest thereon at 9 % p.a. from the date of the suit till payment and all costs of the suit. Suit against the defendant no.2 is disposed of for non prosecution. Court fee refund as per rules."

D.G.KARNIK, J